

REMARKS/ARGUMENTS

Applicant appreciates the Examiner's continued thorough search and examination of the present patent application.

As noted in applicant's previous responses, applicant assumes that the drawings submitted are acceptable for examination purposes. As such time as the applicant is notified that there is patentable subject matter in the present application, formal drawings will be supplied.

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, claim 1 is rejected under 35 U.S.C. §112, second paragraph on the grounds that the word "criteria" is not defined by the claims, and the word "semi-automatically" is similarly not defined by the claims. With respect to the term, "criteria," applicant respectfully submits that a recent search performed on the U.S. Patent and Trademark Office publicly accessible Internet web site uncovered 9,252 issued U.S. patents that include the term, "criteria," in one or more claims. Moreover, a search of the U.S. Patent and Trademark Office Internet web site uncovered 170 issued patents that include the term "semi-automatically," in one or more claims. Further, a search of the U.S. Patent and Trademark Office Internet web site revealed 65 issued patents, several of which issued in late 2004 and early 2005, that include the term, "substantially automatically."

The above provides conclusive evidence that the terms, "criteria," "semi-automatically," and "substantially automatically" are terms that do not render claims indefinite under 35 U.S.C. §112, second paragraph. Applicant respectfully requests that, since U.S. patents are public documents, the Examiner take official notice that the terms, "criteria," "semi-automatically," and "substantially automatically" are not indefinite in accordance with 35 U.S.C. §112, second paragraph.

Applicant notes that the Examiner has interpreted the term "criteria" as a "criteria" by the user for a standard on which a judgement or decision is based. Applicant respectfully disagrees with the Examiner's interpretation of the term "criteria" because claim 1 recites the selection criteria established by "a selection criteria sub-system." The Examiner's interpretation that "criteria" is limited to a user employing a standard on which a judgement or decision is based is

too narrow and restrictive. Accordingly, applicant respectfully requests the Examiner interpret the term, “criteria,” to be established by a selection criteria sub-system for merchandise selection.

With respect to the term, “substantially,” applicant uncovered 804,127 issued patents with one or more claims that include the term “substantially.” With respect to the term, “substantially automatically,” applicant respectfully submits that “substantially automatically” means, generally, it is overwhelmingly more likely that a process or feature of the invention will occur without or with minimal manual input from a user.

For the foregoing reasons, applicant respectfully submits that claim 1 is not indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as evidenced by hundreds and thousands of patents issued by the U.S. Patent and Trademark Office. For present purposes, applicant is reasonably satisfied with the Examiner’s decision, for purposes of examination, to interpret the words “semi-automatically” and “substantially automatically” as generic phrases.

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph on the grounds that the word “subsystem” is a relative word, which renders the claims indefinite. The word “subsystem” is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree other than providing some examples, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. Moreover, the word “subsystem” as recited is so broad that establishing the metes and bounds of the claim are almost impossible. Furthermore, the applicant in the submitted drawings has not depicted the interaction of these “subsystems” nor detailed them in any manner in the written specification. Accordingly, applicant has amended claims 1, 7 and 8 and replaced the term, “subsystem” with the term “module.” Applicant respectfully submit this change overcomes the Examiner’s rejection under 35 U.S.C. §112, second paragraph.

Claims 1-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bernardo et al. (“Bernardo,” U.S. Patent No. 6,684,369) in view of Saroja Girishankar (“Catalog,” “Build the e-commerce catalog”). Applicant respectfully traverses this rejection.

Applicant’s amended claim 1 defines a “website constructor” that includes a plurality of modules, including a “selection criteria module,” a “website organization module,” a “graphic design module,” a “merchandise selection module,” a “merchandise information downloading

module” and a “website builder.” The “website organization module” and “graphic design module,” respectively, define a “look and feel” and create “at least one website layout and features setup” for a website constructed by the website constructor. Moreover, the “selection criteria module” establishes “criteria for merchandise selection” and the “merchandise selection module” selects “merchandise offered for sale on the website constructed by the website constructor” that “matches the selection criteria” and is “based on merchandise made available by a plurality of vendors[.]” The “merchandise information downloading module” downloads “merchandise information” from “a plurality of vendors of merchandise[.]” The merchandise information defines “merchandise offered for sale on the website constructed by the website constructor that has been selected by the merchandise selector module[.]”

Thus, a plurality of vendors provide merchandise offered for sale on a website constructed by the website constructor, based on selection criteria established by the selection criteria module. Information regarding the merchandise provided by a plurality of vendors is downloaded by the merchandise information downloading module. Applicant respectfully submits that, for the reasons set forth below, the combination of elements defined in Applicant’s claim 1 is not taught or suggested by Bernardo, Catalog, or both references combined.

Bernardo describes a fairly typical prior art web site creation tool that essentially applies pre-defined HTML templates to enable a user to build internet web sites (see Abstract). The user is prompted to select features and options desired for the web site and to supply information corresponding to the selected features, and the tool builds the web site from the pre-stored HTML templates and supplied data from the user.

As noted by the Examiner, Bernardo is silent with respect to applicant’s claim 1 “selection criteria [module]”, “merchandise selection [module]”, and “merchandise information downloading [module]”. Applicant respectfully submits further that Bernardo is largely silent with respect to using the “tool” to build an e-commerce web site. In particular, Bernardo states “[s]ome embodiments of the invention *may provide features which are advantageous* for electronic commerce (E-commerce)” (emphasis added, see column 14, lines 6-34). The “advantageous features” described Bernardo are related to customer-specific discounts, shipping information, or the like, and do not relate to a website constructor that builds a website based on criteria and conditions setup by applicant’s claimed modules. Bernardo makes passing reference

to Lotus NOTES for managing applications, but is largely silent with regard to applicant's claim 1 merchandise "offered for sale on the website[.]" Accordingly, applicant respectfully disagrees with the Examiner that Bernardo teaches applicant's claim 1 "website builder" because claim 1 defines that the website builder builds a website based on the criteria and conditions that have been setup by the "selection criteria module," the "website organization module," the "graphic design module," the "merchandise selection module" and the "merchandise information downloading module" (i.e., the "foregoing modules"). Bernardo does not teach or suggest these features, and thus does not teach or suggest applicant's claim 1 "website builder."

Catalog is cited for providing elements of applicant's claim 1 that the Examiner believes are missing from the teachings of Bernardo. In particular, Catalog is cited for applicant's "selection criteria [module]," "merchandise selection [module]," and "merchandise information downloading [module]," all of which the Examiner concludes are included in a "website constructor" taught by Catalog. Applicant respectfully disagrees.

Catalog is a description of the evolution of e-procurement systems that incorporate uniform Extensible Markup Language ("XML") data. Using XML tags, data can be categorized using well-known and used terms, thereby simplifying the process associated with procurement.

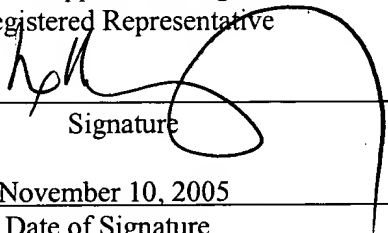
Applicant respectfully submits that Catalog does not teach or suggest the elements of applicant's claim 1 that are missing from the teachings of Bernardo. Catalog is silent with respect to building a website, and accordingly does not teach or suggest applicant's claim 1 "website constructor." Moreover, Catalog is silent with respect to applicant's claim 1 "selection criteria module." Instead, Catalog teaches providing uniform data, formatted in XML, that enables buyers' ability to search and locate data, and that provides data that are regularly updated. (see Abstract). Catalog does not teach establishing selection criteria for merchandise selection that is matched by a website constructor to select merchandise offered for sale on a website. This patentably distinct feature, defined in applicant's claim 1, is missing from Catalog (and Bernardo) because Catalog is not directed to building websites based on selection criteria and conditions set up by the modules defined in applicant's claim 1. For the same reasons, Catalog does not teach or suggest applicant's claim 1 merchandise information downloading system that downloads merchandise information defining the merchandise offered for sale on the website constructed by the website constructor.

Therefore, for the foregoing reasons, applicant respectfully submits that the neither Bernardo nor Catalog, taken alone or in combination, teach or suggest the features defined in applicant's claim 1.

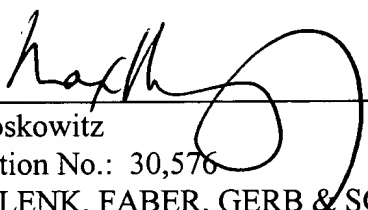
Claims 2-13 depend directly or indirectly from claim 1 and are, therefore, patentable for the same reasons, as well as because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Accordingly, it is respectfully submitted that claim 1 and all its dependent claims clearly define over the prior art. Therefore, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on November 10, 2005:

_____ Max Moskowitz Name of applicant, assignee or Registered Representative
_____  Signature
_____ November 10, 2005 Date of Signature

Respectfully submitted,

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